IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

OP.No. 7060 of 1998(M)

PETITIONER:

G. BHASKARA PILLAI, "NISHA", AROOR P.O., ALAPPUZHA DIST. (DIED)

2. LALITHAMBIKAMMA, W/O. LATE G. BHAOSKARA PILLAI, AGED 55 YEARS, 'NISHA', AROOR P.O., ALAPPUZHA DIST.

3. NISHA K.L., D/O. LATE G. BHASKARA PILLAI, AGED 28 YEARS, DO. DO.

ADDL. PETITIONERS 2 AND 3 IMPLEADED AS PER ORDER DT. 28-7-2004 IN I.A.NO. 9442/2004.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. THE ACCOUONTANT GENERAL (A&E), KERALA, THIRUVANANTHAPURAM.

4. THE DEPUTY DIRECTOR OF EDUCATION,ERNAKULAM.

BY GOVERNMENT PLEADER SRI. SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF ORDER DT. 28-6-1993.

EXT.P2 ORDER DT. 10-5-1994.

EXT.P3 ORDER DT. 15-5-1996.

EXT.P4 JUDGMENT DT. 26-8-1997 IN O.P.8477/94.

EXT.P5 ORDER DT. 10-3-1998.

EXT.P6 ORDER DT. 22-1-1996.

EXT.P7 REGISTERED NOTICE DT. 16-8-1997.

EXT.P8 LETTER DT. 29-10-1997.

EXT.P9 ORDER DT. 6-12-1997.

EXT.P10 LETTER DT. 16-12-1997.

EXT.P11 LIABILITY CERTIFICATE DT. 9-3-1998.

EXT.P12 GOVT. ORDER DT. 26-2-1998.

RESPONDENTS' EXHIBITS:

EXT.R2(a) LETTER NO. 13644/C3/98/G.EDN. DT. 2-6-1998.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 7060 of 1998

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Dated this, the 8th January, 2007.

J U D G M E N T

The 1st petitioner retired from service as Deputy Director of Education on 30-4-1993. At that time, some disciplinary proceedings were pending against him. Because of the same, his retirement benefits were not disbursed to him. Therefore, he filed O.P.No. 8477/1994, in which this Court directed disbursement of the retirement benefits to the 1st petitioner but gave liberty to the respondents to complete the disciplinary proceedings within three months from the date of receipt of copy of the judgment. Pursuant to that judgment, the Director of Public Instructions issued Ext. P5 order dropping the disciplinary action against the 1st petitioner. It appears that, in the meanwhile, pursuant to an audit objection, proceedings were initiated to fix certain liability on the petitioner. Originally the liability proposed was Rs. 8771.95 as per Ext. P6 order. Later, Ext. P7 notice dated 16-8-1997 was issued to him directing him to show cause why an amount of Rs. 17,543.90 should not be fixed on the petitioner as liability from him. The petitioner filed Ext. P8 reply and despite the reply which was filed on 29-10-1997, the Director of Public Instructions passed Ext. P9 order dated 6-12-1997 fixing the said amount as liability on the petitioner. The 1st petitioner again filed Ext.P10 representation to which he has given Ext. P11 liability certificate showing his liability as Rs. 22,884/-. The 1st petitioner challenged Exts. P9 and P11 in this original petition. During the pendency of the original petition, the 1st petitioner died and legal heirs have come on record as additional petitioners 2 and 3.

2. The main contention raised by the petitioner is that Exts. P9 and P11 have been issued beyond the three year period prescribed by Note 3 to Rule 3 of Part III of KSR. Counsel for the petitioners would submit that going by the said Note, liability should have been

quantified and intimated to the 1st petitioner within three years on becoming pensioner. The 1st petitioner retired from service on 30-4-1993. Ext. P9 is issued on 6-12-1997, which is more than four years after the retirement of the 1st petitioner. Ext. P11 liability certificate is still later dated 9-3-1998.

3. Learned Government Pleader would submit that it is not necessary that the final proceedings fixing the liability should be within the three years, but only proceedings need be initiated within three years.

4. I have considered the rival contentions in detail.

5. Note 3 of Rule 3 of Part III of KSR reads thus:

> "Note 3:- The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him."

The language used in the said Note is unambiguous to the effect that the liabilities of a pensioner should be quantified and intimated to him within three years on his becoming a pensioner. By no stretch of imagination can the same be construed to the effect that the proceedings need only be initiated within the said period. In that view, Exts. P9 and P11 are issued beyond the limitation period prescribed in Note 3 of Rule 3 of Part III KSR. Therefore, no liability could have been fixed and realised from the 1st petitioner's retirement benefits by Exts. P9 and P11.

6. Accordingly, Exts. P9 and P11 are quashed. Respondents are directed to disburse the balance retirement benefits due to the 1st petitioner to petitioners 2 and 3 including the amount withheld as liability within two months from the date of receipt of a copy of this judgment.

The petitioners raised a claim for interest also. I leave the question of interest open to be agitated by the petitioners in appropriate proceedings. The original petition id disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/